IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5797 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYABHAI ANNAMANTU NAIK

Versus

STATE OF GUJARAT

Appearance:

Ms. Banna Dutta appointed amicus curie,Adv. for Petitioner

Mr. K.T. Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta appointed amis curie for the petitioner and learned A.G.P. Mr. K.T.Dave, on behalf of the respondents nos.1, 2 and 3.

1 The detention order dated 17-4-1999 passed by the Commissioner of Police, Surat (the respondent no.2) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of

Anti Social Activities Act, 1981("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

1.1 The detenu having claimed legal aid and despite direction to the office, as no legal aid is assigned to the detenu, learned Advocate Ms. Banna Dutta is appointed amicus curie. Ld. A.G.P. was directed to supply the copy of detention order and accompanying documents.

2. The grounds of detention inter alia indicate that one Prohibition case was registered against the petitioner-detenu and his co-accused on 16-2-1999. The charge was filed and the matter is pending for trial. The detenu was released on bail on the same day i.e. 16-2-1999 in the said case.

2.1 The grounds of detention further indicate that two witnesses on assurance of anonymity have given statements against the petitioner-detenu with regard to bootlegging activities of the petitioner-detenu and have narrated in respect to two incidents dated 17-3-1999 and 28-3-1999.

3. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order is bad in law on account of unexplained delay in taking action after the date of registration of last offence against the petitioner and non consideration of less drastic remedy like cancellation of bail under Section 437(5), CR.P.C. though available.

5. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

5.1 That this Court in the case of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381, after having considered the various authorities of the Supreme Court has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid.

6. The grounds of detention is also devoid of any explanation as to why less drastic remedy like claiming cancellation of bail in a criminal case registered against the petitioner was not considered before passing the impugned order.

7. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

8. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 17-4-1999 passed by the Commissioner of Police, Surat (respondent no.2) is hereby quashed and set aside. The petitioner-detenu-Kanaiyabhai Annamantu Naik is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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